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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues  
13 Against:

Case No. 2011-710

14 **BREE HOWINGTON**  
259 Allen Street  
15 Brawley, CA 92227

**STATEMENT OF ISSUES**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about June 21, 2010, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Bree Howington  
24 (Respondent). On or about June 7, 2010, Bree Howington certified under penalty of perjury to  
25 the truthfulness of all statements, answers, and representations in the application. The Board  
26 denied the application on September 28, 2010.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 ....

7 7. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to evaluate  
9 the rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation  
13 furnished by the applicant or licensee.

14 8. Section 2761 of the Code states:

15 The board may take disciplinary action against a certified or licensed nurse or  
16 deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the  
18 following:

19 ....

20 (f) Conviction of a felony or of any offense substantially related to the  
21 qualifications, functions, and duties of a registered nurse, in which event the record of  
22 the conviction shall be conclusive evidence thereof.

23 ....

24 9. Section 2762 of the Code states:

25 In addition to other acts constituting unprofessional conduct within the meaning  
26 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
27 licensed under this chapter to do any of the following:

28 ....

(b) Use any controlled substance as defined in Division 10 (commencing with  
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

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1 (c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of  
3 this section, or the possession of, or falsification of a record pertaining to, the  
substances described in subdivision (a) of this section, in which event the record of  
the conviction is conclusive evidence thereof.

4 ....

## 5 REGULATORY PROVISIONS

6 10. California Code of Regulations, title 16, section 1444 states:

7 A conviction or act shall be considered to be substantially related to the  
8 qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
9 manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

10 (a) Assaultive or abusive conduct including, but not limited to, those violations  
11 listed in subdivision (d) of Penal Code Section 11160.

12 (b) Failure to comply with any mandatory reporting requirements.

13 (c) Theft, dishonesty, fraud, or deceit.

14 (d) Any conviction or act subject to an order of registration pursuant to Section  
290 of the Penal Code.

15 11. California Code of Regulations, title 16, section 1445 states:

16 (a) When considering the denial of a license under Section 480 of the code,  
17 the board, in evaluating the rehabilitation of the applicant and his/her present  
eligibility for a license will consider the following criteria:

18 (1) The nature and severity of the act(s) or crime(s) under consideration as  
grounds for denial.

19 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
20 under consideration as grounds for denial which also could be considered as grounds  
for denial under Section 480 of the code.

21 (3) The time that has elapsed since commission of the act(s) or crime(s)  
22 referred to in subdivision (1) or (2).

23 (4) The extent to which the applicant has complied with any terms of parole,  
probation, restitution, or any other sanctions lawfully imposed against the applicant.

24 (5) Evidence, if any, of rehabilitation submitted by the applicant.

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**FIRST CAUSE FOR DENIAL OF APPLICATION**

**(August 14, 2009 Criminal Conviction for DUI on April 11, 2009)**

12. Respondent's application is subject to denial under sections 480, subdivision (a)(1) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

a. On or about August 14, 2009, in a criminal proceeding entitled *People of the State of California v. Bree Mantooth Howington*, in Imperial County Superior Court, case number ECM29598, Respondent was convicted on her plea of no contest to violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more, misdemeanors.

b. As a result of the conviction, on or about August 14, 2009, Respondent was sentenced to three years summary probation, and ordered to serve two days with Cal Trans work service. Respondent was further ordered to complete the Alcohol Safety Class, comply with standard DUI probation conditions, and pay fines, fees, and restitution in the amount of \$1,589.00.

c. The facts that led to the conviction were that on or about the early morning of April 11, 2009, California Highway Patrol (CHP) officers on duty in a marked patrol car in the city of Imperial observed a vehicle, driven by Respondent, waiting at a stop sign at an intersection. As the patrol car approached the intersection, Respondent entered the intersection directly into the path of the CHP car. The officer took evasive action and swerved into the adjacent lane to avoid colliding with Respondent. Respondent passed the patrol car, then changed lanes directly in front of the CHP car. The CHP officers conducted a traffic stop. Upon contacting Respondent, the officer noted that there was an odor of an alcoholic beverage on Respondent's breath, her eyes were red and watery, and her speech was slow and slurred. There were three passengers in the vehicle. Respondent admitted to consuming three beers earlier in the evening. Respondent was asked to exit her vehicle and as she walked to the shoulder of the road, it was noted that she was unsteady on her feet and had to use her vehicle to lean on. Respondent

submitted to a series of field sobriety tests which she was unable to perform as explained and demonstrated. Respondent was arrested and taken to the El Centro CHP office for processing.

Respondent provided two breath samples that tested at .18 and .17 percent BAC.

**SECOND CAUSE FOR DENIAL OF APPLICATION**

**(October 18, 2010 Criminal Conviction for DUI on July 11, 2010)**

13. Respondent's application is subject to denial under sections 480, subdivision (a)(1) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

a. On or about October 18, 2010, in a criminal proceeding entitled *People of the State of California v. Bree Howington*, in Imperial County Superior Court, case number BCM23224, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or more, a misdemeanor. The court also found true the enhancement that Respondent was previously convicted of driving under the influence, and driving with a BAC of .08 percent or more on August 14, 2009, as described in paragraph 12, above. Count 1, driving under the influence of alcohol, a violation of Vehicle Code section 23152, subdivision (a), was dismissed pursuant to a plea agreement.

b. As a result of the conviction, on or about October 18, 2010, Respondent was sentenced to three years summary probation. Respondent was further ordered to complete an SB-38 drinking driver program, and pay a \$1,638 fine. Respondent was permitted to convert the fine into 194 hours of community service and payment of \$160.

c. The facts that led to the conviction were that on or about six in the morning on July 11, 2010, an officer from the Brawley Police Department was dispatched to investigate a subject that was trapped in a vehicle that was involved in a traffic collision. Upon arrival, the officer noted a vehicle stalled on the railroad tracks with major damage. The Brawley Fire Department and paramedics were already on scene evaluating Respondent who was the sole occupant of the vehicle. Upon contacting Respondent, the officer noted that there was an odor of an alcoholic beverage emitting from her breath and person, her eyes were bloodshot and watery, and that she had bumped her head. Respondent told the officer that she last consumed four beers

1 approximately 12 hours earlier. The officer had Respondent exit her vehicle and she walked with  
2 an unsteady gait. Despite the fact that she had a large contusion to her left eye and she was  
3 complaining of pain to her head, she refused medical treatment. The officer noted injuries to  
4 Respondent's left arm. Due to her injuries, the officer elected not to perform field sobriety tests.  
5 Respondent was transported to a local hospital where she provided two breath samples that tested  
6 at .12 and .13 percent BAC. Respondent provided a statement to the officer where she explained  
7 that the tires on her vehicle were bald. She was driving at approximately 50 mph when she  
8 entered a curve in the road. She lost control and the vehicle flipped and landed on the railroad  
9 tracks.

### 10 **THIRD CAUSE FOR DISCIPLINE**

#### 11 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

12 14. Respondent's application is subject to denial under sections 480, subdivision  
13 (a)(3)(A), and 2762, subdivision (b) of the Code in that on or about April 11, 2009, and July 11,  
14 2010, Respondent used alcoholic beverages to an extent or in a manner that was dangerous and  
15 injurious to herself and the public when she operated a motor vehicle while under the influence of  
16 alcohol, as detailed in paragraphs 12 and 13, above, unprofessional conduct substantially related  
17 to the qualifications, duties, and functions of a registered nurse.

### 18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

#### 19 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

20 15. Respondent's application is subject to denial under sections 480, subdivision  
21 (a)(3)(A), and 2762, subdivision (c) of the Code in that on or about August 14, 2009, and October  
22 18, 2010, Respondent was convicted of criminal offenses involving the consumption of alcohol as  
23 detailed in paragraphs 12 and 13, above, unprofessional conduct substantially related to the  
24 qualifications, duties, and functions of a registered nurse.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Bree Howington for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 2-15-2011

  
for LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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